

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

June 19, 2009

Mona Lisa Harrison  
W.C.I.  
660 Baylor Boulevard  
New Castle, DE 19720

RE: State v. Harrison, Def. ID# 87S00410DI ( R-2)

DATE SUBMITTED: March 16, 2009

Dear Ms. Harrison:

Pending before the Court is the second motion for postconviction relief which Mona Lisa Harrison (“defendant”) has filed pursuant to Superior Court Criminal Rule 61 (“Rule 61”). This is the Court’s decision denying the Rule 61 motion.

The police report prepared in connection with the investigation of defendant’s case shows the following. In June, 1987, defendant and others conspired to rob William A. Hastings, who was defendant’s great-uncle. The co-defendants were Wayne Hammond (“Hammond”), Melvin Ward (“Ward”), Kenneth Smith (“Smith”), and David Bowen (“Bowen”). Defendant suggested Mr. Hastings as a victim because she knew he might have money. According to Ward, defendant and Smith planned the robbery of Mr. Hastings. All five co-defendants drove to the site of the crime

during the middle of the night. According to Smith, during the ride over, Ward announced that if the victim should give them any trouble, they were to shoot him. Defendant waited in the car while her co-defendants attempted to rob Mr. Hastings. Hammond possessed a sawed-off shotgun and went to the door. Ward, Smith and Bowen were nearby. When Mr. Hastings came to the door, he saw the gun in Hammond's hand, grabbed it, and a struggle ensued. The gun went off during the struggle and Mr. Hastings was shot in the leg. The struggle continued, even though Mr. Hastings had been shot. Mr. Hastings and Hammond fell down the front steps. During the struggle, Ward, Bowen and Smith came up. Bowen struggled with the victim and took the gun away from him while Ward and Smith went into the house. One of the co-defendants, either Smith or Hammond (the story changed depending on who told it), took Mr. Hastings' wallet from him and went through it, but there was no money in it. Mr. Hastings was lying on the ground and Hammond hit him twice with a shovel. Mr. Hastings was alive, yelling at them, as they all fled back to the car. However, he died from his wounds. Defendant told her co-defendants she saw it all happen while she was at the car.

Defendant was indicted on charges of attempted robbery in the first degree; three counts of possession of a deadly weapon during the commission of a felony; conspiracy in the second degree; two counts of murder in the first degree; and possession of a destructive weapon.

A review of the guilty plea form, the plea agreement, a checklist memorandum, and the transcript of the plea colloquy which took place on December 18, 1987, shows the following.

Trial counsel and defendant reviewed the State's theory of felony murder under both first and second degree as to liability for the conduct of others. Defendant entered into a plea agreement whereby she pled guilty to a charge of murder in the second degree in exchange for the State of

Delaware (“the State”) dropping the remaining charges. The specific charge to which she pled guilty was a lesser-included charge of felony first degree murder; she pled guilty to felony second degree murder.<sup>1</sup> She admitted that she, in the course of and in furtherance of the commission of the felony of attempted murder in the first degree, with criminal negligence, did cause the death of William A. Hastings. Transcript of December 18, 1987 Plea Colloquy.

Defendant was sentenced on March 31, 1988. The sentence had to be life. 11 Del. C. §§ 635, 4205(b)(1), ( c) (Repl. 1987). This life sentence was subject to parole. 11 Del. C. § 4346( c) (Repl. 1987).<sup>2</sup>

Defendant did not appeal. Thus, the judgment in her case became final for Rule 61 purposes on April 30, 1988. Super. Ct. Crim. Rule 61(m)(1).<sup>3</sup>

Defendant’s first motion for postconviction relief was filed on January 5, 2006. She alleged

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<sup>1</sup>At the time, 11 *Del. C.* § 635 provided:

A person is guilty of murder in the second degree when:

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(2) In the course of and in furtherance of the commission or attempted commission of any felony not specifically enumerated in § 636 of this Title or immediate flight therefrom, he with criminal negligence, causes the death of another person.

<sup>2</sup>Defendant originally was paroled in January, 1996. She has been in and out of prison since then, having obtained various sets of new charges and parole violations over the years. She currently is incarcerated on another parole violation.

<sup>3</sup>In Super. Ct. Crim. R. 61(m)(1), it is provided in pertinent part:

(m) *Definition.* A judgment of conviction is final for the purpose of this rule as follows:

(1) If the defendant does not file a direct appeal, 30 days after the Superior Court imposes sentence....

ineffective assistance of counsel. This Court denied that motion as untimely filed and ruled defendant had failed to show the existence of an exception to the time bar; the Supreme Court affirmed the decision. *State v. Harrison*, Del. Super., Def. ID# 87S00410DI, Stokes, J. (Feb. 6, 2006), *aff'd*, 903 A.2d 322, 2006 WL 1881671 (Del. July 6, 2006) (TABLE).

Defendant filed her second motion for postconviction relief on March 11, 2009. In that motion, she asserts several grounds for relief. The first ground is that the felony murder law has changed; the change is retroactively applicable to her case; and the application of that law requires her plea to be vacated. She further argues that the law regarding accomplice liability has changed and she is not as liable as major players. She contends that since she was not at the scene of the crime, she could not have been convicted of accomplice liability. She argues she should have been offered a plea to a lesser charge, such as conspiracy or manslaughter, due to her lack of involvement in the crime. Finally, she argues she was not given a mental health evaluation after a very traumatic incident before the plea discussion.

Defendant's claims are procedurally barred.<sup>4</sup>

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<sup>4</sup>Since July 1, 2005, Rule 61(i), has provided as follows:

*Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.

(3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows

(A) Cause for relief from the procedural default and

Defendant's claims that she did not have a mental health evaluation and that she should have been offered a plea to conspiracy or manslaughter are time-barred. She should have raised them three years from when her conviction was final. She has failed to argue that any exceptions to the time bar exists. The claims are barred and thus, are denied.

Defendant's other claims are based on laws pertaining to felony murder and accomplice liability. Defendant pled guilty to felony murder in the second degree. She was responsible, also, based on the law of accomplice liability.

The law in the area of felony murder has been in flux since defendant's crime and conviction. Defendant's crime and conviction became final before the issuance of the decision in *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992) ("*Chao*"), and the issues that have resulted from that decision.

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(B) Prejudice from violation of the movant's rights.

(4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

(5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Before July 1, 2005, subsection (1) of this provision of the Rule 61 provided as follows:

*Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

In *Chao*, the Supreme Court held:

[T]he inclusion of the phrase “in furtherance of” as used throughout §§ 636 and 635 was not meant to require that the killing be committed as an incident to an underlying felony. On the contrary, for felony murder liability to attach, a killing need only accompany the commission of an underlying felony. Thus, if the “in furtherance” language has any limiting effect, it is solely to require that the killing be done by the felon him or herself.

*Id.*

Then, in 2003, the Supreme Court overruled this portion of *Chao* in the case of *Williams v. State*, 818 A.2d 906 (Del. 2003) (“*Williams*”). In *Williams*, the Court held that the “felony murder statute not only requires that the murder occur during the course of the felony but also that the murder occur to facilitate commission of the felony.” *Williams v. State*, *supra* at 913. In *Chao v. State*, 931 A.2d 1000, 1000 (Del. 2007) (“*Chao II*”), the Supreme Court ruled that “*Williams* must be applied retroactively, because Chao may have been convicted for acts that do not constitute felony murder.” The *Chao II* decision was dated June 20, 2007.

Defendant’s claims based on the *Williams*’ decision are time-barred, also.

The date of the *Williams* decision and order as amended was April 1, 2003. At that time, Superior Court Criminal Rule 61(i)(1) provided that a motion for postconviction relief which was based on a “retroactively applicable right that is newly recognized after the judgment of conviction is final” could not be filed more than three years after the Supreme Court first recognizes the right. Thus, to the extent defendant had a claim based on *Williams*, she had to file it no later than April 1, 2006. Even if the Court gave her the benefit of the doubt and ruled that *Chao II* provided her with the right to assert a claim under *Williams*, her motion remains time-barred. As of the time *Chao II* was handed down, Superior Court Criminal Rule 61(i)(1) had been revised and the version in effect required that a claim must be filed one year, not three, from the date the Supreme Court

recognized the right. Defendant should have filed her motion no later than June 20, 2008. She failed to do so and she has failed to establish how her felony murder claims constitute an exception to the time bar.

Even if the Court ignored the time bar and considered defendant's claim regarding felony murder, those claims would fail.

The claim would fail, initially, because defendant, by pleading guilty to the crime, waived her right to challenge the sufficiency of evidence presented against her. *Hartman v. State*, 918 A.2d 338, \*2, 2007 WL 38401 (Del. Jan. 8, 2007) (TABLE); *Brice v. State*, 2009 WL 477302, \*2 (Del. Super. Feb. 26, 2009).

Even if the Court considered the argument, it is meritless. The Supreme Court addressed identical arguments in *Hassan-El v. State*, 911 A.2d 385, 391-92 (Del. 2006) ("*Hassan-El*");

Hassan-El's argument fails to recognize that the felony-murder charge was based upon an attempted robbery not a completed robbery. Hassan-El's contention is contrary to the express statutory language that makes homicides during an attempted felony the crime of felony murder. \*\*\*

Under the Criminal Code, an "attempt" to commit a crime occurs when the defendant's conduct is "a substantial step" in a course of conduct planned to culminate in the commission of the crime." A "substantial step," in turn, is defined as an "act or omission which leaves no reasonable doubt as to the defendant's intention to commit the crime." The law of "attempts" under the Criminal Code "seeks to prevent even the preparations from crime by threatening punishment prior to the completion of the crime. In other words, the crime of "attempt" is completed whenever the defendant has taken a "substantial step" toward the commission of the crime, whether or not the crime itself ever actually occurs. [Footnotes and citations omitted.]

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\*\*\* The felony-murder statute expressly provides that a homicide committed during an attempted felony can constitute felony murder. When Hasan-El attempted to commit a robbery of the ice cream man, the homicide that resulted was felony murder because it occurred "in the course of and in furtherance of the ... attempted commission of a felony," even if the separate felony of robbery was not accomplished - for whatever reason.

In this case, substantial steps to rob Mr. Hastings took place. The only reason no robbery actually occurred was because Mr. Hastings did not have money in his wallet. Defendant has no basis to claim she could not have been liable for felony murder in this situation.

Defendant also advances an undeveloped argument about accomplice liability. The recent decision in *Allen v. State*, 970 A.2d 203 (Del. 2009) is inapplicable, as it deals with jury instructions on accomplice liability. Thus, as was the case with regard to the other claims, this claim is time-barred. Even if the Court considered it, it would fail.

First, the claim would fail because defendant, by pleading guilty to the crime, waived her right to challenge the sufficiency of the evidence presented against her. *Hartman v. State, supra*; *Brice v. State, supra*.

Second, case law supports her liability for such a crime. Defendant was a part of the conspiracy from the beginning. She was aware the co-defendants were taking a shotgun with them when they attempted to rob Mr. Hastings in the middle of the night at his home. Mr. Hastings' death was a foreseeable consequence of the attempted robbery. Thus, defendant was liable as an accomplice. *Hassan-El v. State*, 911 A.2d at 392-5.

For the foregoing reasons, defendant's motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office  
Department of Justice